

U.S. Department of Labor

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Issue Date: 20 December 2005

In the Matter of

ADMINISTRATOR, UNITED STATES
DEPARTMENT OF LABOR,
WAGE AND HOUR DIVISION
Complainant

v.

ALDEN MANAGEMENT SERVICES, INC.
Respondent

Case No.: 1996-ARN-3

DECISION AND ORDER ON REMAND

On November 19, 1999, I issued a *Decision and Order* in this case ordering the respondent to pay \$607,345.87 in back wages and a \$40,000.00 civil penalty for violations of the Immigration Nursing Relief Act of 1989.¹ On August 30, 2002, the Administrative Review Board (“ARB”) issued a decision which upheld all of my findings of fact and conclusions of law except for my limitation of back pay to the period from April, 1994 through June, 1995. The ARB remanded the case to me to determine the back pay to be awarded for the entire time the H-1A nurses were employed by Alden Management Services (“AMS”).

On October 28, 2003, I issued an order setting out the issues on remand and denying respondent’s contention that the Supreme Court’s decision in *Hoffman Plastic Compounds v. NLRB*, 535 U.S. 137, 122 S. Ct. 1275 (Mar. 27, 2002), precludes an award of back pay. In addition, I expressed my disagreement with the ARB’s holding that back pay can be awarded for work performed under attestations which were not part of the Administrator’s investigation and for which no violations were alleged and no back pay was sought. Since that time the parties have been working on stipulations of the amount of back wages owed under the ARB’s decision. Calculating these back wages was extremely complicated because the Administrator had begun the investigation with the pay period ending on June 30, 1993. Accordingly, records of the nurses’ employment prior to that date had not been collected by the Administrator, and the amount of time that had passed made collection of that data extremely difficult. Knowing that their task was difficult, and believing that, in the long run, stipulations similar to those the parties

¹ That *Decision and Order*, together with the *Interlocutory Order Granting In Part Administrator’s Motion for Summary Judgment* issued on November 3, 1998, are incorporated by reference into this decision to the extent they were upheld by the Administrative Review Board.

had entered into previously regarding the back wages due to the H-1A nurses for the additional periods at issue would save time, I gave the parties tremendous leeway. I granted them numerous extensions of time to obtain and/or recreate the records which they needed to reach stipulations regarding the back wages owed to the H-1A nurses for periods prior to June, 1993 and subsequent to June, 1995. Although the process took much longer than I would have liked, my patience has been rewarded. On December 14, 2005, the parties filed *Complainant's and Respondent's Joint Stipulations on Remand* with Stipulated Exhibits CC through GG. These exhibits are admitted into the record.

I adopt the parties' stipulations regarding the periods prior to June 30, 1993 and subsequent to June 30, 1995. Those stipulations set out the sum owed, assuming the ARB's decision is upheld, to each of the H-1A nurses in each of these periods on *Summary of Unpaid Wages* forms, WH-56, which are appended to this decision. For the period prior to June 30, 1993, the parties stipulate that back wages totaling \$150,089.63 are owed to 25 H-1A nurses, ranging from a low of \$364.50 to a high of \$28,608.28. *See* Stipulated Exhibit DD (Appendix 1). For the period subsequent to June 30, 1995, back wages totaling \$103,999.55 are owed to 30 H-1A nurses, ranging from a low of \$605.43 to a high of \$6,973.74. *See* Stipulated Exhibit FF (Appendix 3). In addition, in connection with this proceeding the first time around, the parties had entered into a stipulation of back wages due if the two-year period for back wages sought by the Administrator – from June 30, 1993 through June 30, 1995 - was held to be applicable. *See* Stipulated Exhibit M (Appendix 2). The total of these back wages was \$787,734.80, owing to 119 H-1A nurses in amounts ranging from a low of \$1,396.50 to a high of \$19,390.71. In the interlocutory decision I issued on November 3, 1998, I held that the Administrator could only obtain back wages for a period of one year prior to the filing of the complaint, which was filed in April, 1995. In light of this ruling, the parties entered into another stipulation covering only the period from April, 1994 through June 30, 1995. *See* Stipulated Exhibit AA, which is Appendix 2 to the November 19, 1999 *Decision and Order*. This stipulation was the basis of my finding that respondent had to pay \$607,345.87 in back wages. In light of the ARB's ruling that the nurses are entitled to back wages for all the time they worked for AMS, the initial back wage stipulation incorporated in the March 11, 1996 *Summary of Unpaid Wages* (Stipulated Exhibit M) rather than the *Summary of Unpaid Wages* prepared in 1999 pursuant to the interlocutory decision (Stipulated Exhibit AA) is applicable. Based on that stipulation, respondent must pay back wages totaling \$787,734.80 for the period from June 30, 1993 through June 30, 1995.

FINDINGS OF FACT

Findings one and three below are taken verbatim from the parties' Joint Stipulations on remand filed on December 14, 2005. Finding two is based on Stipulated Exhibits M and N filed by the parties in 1998.

1. Based upon the ARB's Decision and Order on Remand and this Court's Remand Order on the additional back pay issues the parties agree and stipulate that if the rulings with respect to these issues are upheld, the additional wages earned by and due to the H-1A nurses employed by AMS, Inc. prior to June 30, 1993 total \$150,089.63 which amount is reflected on Exhibit DD-Summary of Unpaid Wages-WH 56 and on Exhibit EE-Wage Transcription Forms.

2. The parties agree that should respondent be held to owe back wages for the period June 30, 1993 through June 30, 1995, the additional wages earned by and due to the H-1A nurses employed by AMS between June 30, 1993 and June 30, 1995 total \$787,734.80 which amount is reflected on Exhibit M-Summary of Unpaid Wages-WH56 and on Exhibit N-Wage Transcription Forms.

3. Based on the ARB's Decision and Order on Remand and this Court's Remand Order on the additional back pay issue the parties agree and stipulate that if the rulings with respect to these issues are upheld, the additional wages earned by and due to the H-1A nurses employed by AMS, Inc. after June 30, 1995 total \$103,999.55 which amount is reflected on Exhibit FF-Summary of Unpaid Wages-WH 56 and on Exhibit GG-Wage Transcription Forms.

Based on these findings, I hold that the respondent must pay back wages totaling \$1,041,823.90 to the H-1A nurses as set out in Exhibits M, DD and FF. Since the Administrator has not requested that additional civil penalties be assessed, the respondent shall pay civil penalties of \$40,000.00.

ORDER

IT IS ORDERED that Alden Management Services, Inc. shall pay:

1. Back pay totaling \$1,041,823.90 as set out in Stipulated Exhibits M, DD and FF; and
2. A civil money penalty of \$40,000.00 to the Wage and Hour Division of the Department of Labor.

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JEFFREY TURECK
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Any interested party desiring review of this Decision and Order must file a petition with the Administrative Review Board, 200 Constitution Avenue, N.W., Room S-4309, Washington, DC 20210 in time to be received by that Board within 30 days of the date of this Decision and Order. The petition shall also be served on all parties and the presiding Administrative Law Judge. *See* 20 C.F.R. §655.445 (cross-referenced from 29 C.F.R. Part 504); 61 Fed. Reg. 19978 (1996).